

November 25, 2009

NORTH DAKOTA LAW BANNING ROBOCALLS IS UNDER ATTACK

BISMARCK – Attorney General Wayne Stenehjem has filed a response with the Federal Election Commission (FEC) opposing efforts by a federal political committee to preempt North Dakota's laws prohibiting pre-recorded telephone messages.

"North Dakota subscribers have made it clear to me that the illegal prerecorded messages are irritating, and violations should be aggressively prosecuted," said Stenehjem.

On October 13, 2009, America Future Fund Political Action (AFFPA) asked the Federal Election Commission (FEC) to decide whether the Federal Election Campaign Act (FECA), which regulates the activities of federal political committees, supersedes state restrictions on pre-recorded telephone calls, known as "robocalls." AFFPA wants to use robocalls as part of a nationwide political campaign. However, North Dakota's law prohibits robocalls even for political purposes. AFFPA is seeking an opinion from FEC that it should not have to comply with state law restrictions on the use of prerecorded messages and robocalls.

AFFPA argues that the North Dakota's law limits federal candidate expenditures, an area it claims is regulated solely by federal law, because it restricts a federal political committee from spending money on prerecorded messages. Stenehjem's response makes a clear legal argument that North Dakota's law is not preempted by the Federal Election Commission because FECA supersedes state law only with respect to election to Federal office.

"AFFPA's absurd argument smacks of a desperate attempt to avoid complying with state law so it can use its vast financial resources to inundate North Dakota telephones, answering machines and cell phones with pre-recorded political messages," said Stenehjem. "I will vigorously enforce North Dakota's restrictions on prerecorded messages whether it's political, questionable automotive warranty, or other illegal calls," he continued.

Stenehjem's response also reminds the Federal Election Commission that North Dakota's law regulating the use of prerecorded messages and robocalls is a consumer protection statute enacted to protect consumers' privacy, including residential privacy, the peaceful enjoyment of the home and the well-being and tranquility of the community.

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